Another step the Commission must take is to require a BOC seeking to exercise the right to negotiate for the choice of interLATA carriers to agree to a complete structural separation of the BOCs payphone business from its regulated activities. Given the increased leverage the BOCs would obtain through their tremendous bargaining power, non-structural safeguards will simply not be adequate. Structural separation would not be inconsistent with Section 276(b)(1)(C) since the Commission has a separate public interest finding to make under Section 276(b)(1)(D).

Certainly, in the event that the Bell companies are granted interLATA carrier selection authority and are later permitted to enter the in-region interLATA marketplace, pursuant to Section 271 of the Act, the competitive impact would be even greater. The Bell companies would be able to select themselves as the interLATA 0+carrier and thereby directly leverage their dominance of the payphone market into the interLATA 0+ market. The Commission should make clear, as part of the regulations adopted herein, that a Bell company presubscribing any of its own payphones to its own 0+ interLATA services will be subject to a limit, along the lines indicated above, on the amount of traffic that could be sent to the long distance affiliate from the Bell payphones and subject to a requirement to pay the same commission level to an aggregation of IPPs providing comparable traffic.

In connection with this issue, it must be recognized that, as discussed above, the BOCs suffer no disadvantage by not being able to choose the presubscribed interLATA OSP. On 0+ interLATA calls, where MFJ restrictions apply, OSPs simply pay commissions directly to the location provider rather than to the Bell company's payphone division. The BOC payphone operations are the beneficiaries of commission payments made to location providers because those commission payments are the equivalent of the commission payments the location provider could

obtain by dealing with an IPP provider. Every dollar in commissions paid by an OSP to a location provider with a Bell payphone leads to a commensurate reduction, and hence benefit, to the Bell payphone division. At present, presubscription of Bell payphone locations is handled by location providers - often large businesses in their own right such as hotel chains, retail store chains, etc -- or location "agents" that contract with large numbers of location providers in order to deliver "aggregated" traffic. These entities are able to obtain commission levels that are comparable to and often higher than those available to IPP providers, which are typically small businesses. Those commission payments directly benefit the Bell companies by improving their ability to outbid IPP providers for locations. IPP providers in turn must pay competitive commission levels that are competitive with the commissions location providers can receive from their "agents" or directly from OSPs.

V. Selection of IntraLATA Carriers Serving Payphones (¶¶ 74-75)

The Notice requests comment on its tentative conclusion that all payphone service providers, whether LECs or PSPs should have the right to select and contract with the intraLATA carrier serving the payphone, subject to any agreements with location providers and that intraLATA carriers should meet the FCC's minimum standards for rating and handling emergency calls.

For the present, regulation in this area should follow the text of Section 276(b)(1)(E) of the Act, subject to two qualifications. First a proviso should be added to address the public safety concern. Second, It must be made explicit that the right to choose an intraLATA carrier includes the right to use the carrier for local sent and non-sent paid calls

> All payphone service providers [have] the right to negotiate with the location provider on the location provider's selecting and contracting

> with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry intraLATA calls from their payphones, including toll and local calls, provided however, that a state may adopt reasonable regulations to qualify a carrier to handle emergency calls dialed as a "0" without additional digits.

47 U.S.C. § 276(b)(1)(C) (new material underscored).

VI. PUBLIC INTEREST PAYPHONES

Under Section 276(b)(2) of the Act, Congress directs the Commission to:

> determine whether public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone, should be maintained, and if so, ensure that such public interest payphones are supported fairly and equitably.
>
> 47 U.S.C. § 276(b)(2).

To some extent, local exchange carriers have supposedly placed "public service" payphones that lose money at some locations, such as playgrounds, remote areas, etc. A uniform calling rate with costs driven to the cost causative ratepayer could compromise these state objectives.

Under the Act, the FCC is directed "to determine whether public interest payphones, which are provided in the interest of public health, safety, and welfare in locations where there otherwise would not be a paid phone, should be maintained, and if so, ensure that such public interest payphones are supported fairly and equitably." Because the assessment of the need for and the placement of such phones is particularly a matter of local knowledge and because the states have viewed some public payphones as particularly important in implementing universal service, the states would be authorized to administer public interest payphone programs. The state

regulatory agencies would determine whether such public interest payphones should be placed and if so, where, etc. In addition, the states would be given the discretion to continue to determine the funding mechanism for such payphones, as the states do now States would be free to determine whether, since these public interest payphones are an extension of universal service, the local network services used by these payphones should be provided at a reduced rate, or funded through a rate element paid by payphone providers, a levy on interexchange carriers, or some combination of these. Further, the states could determine whether, on a phone-by-phone basis, the local coin rate charged to end users at particular public interest payphones that serve particular areas, e.g., school yards, certain rural locations, certain core city areas, etc., should be set below the uniform national maximum rate. In like manner, the states would be free to determine that the most efficient way of encouraging the deployment of payphones in a particular area, or even on a state-wide basis, is to set a maximum calling rate that exceeds the uniform national rate, and states should be free to do so.[37]

The issue of "public interest" payphones ("PIPs") has been addressed at length at the state level by the California Public Utilities Commission In the course of that investigation, the CPUC attempted to determine the number of public interest payphones in California using various progressively refined criteria The initial criterion suggested by LECs was the group of payphones that did not "break even," i.e., recover sufficient revenue to cover the attributed costs. The number of LEC payphones that fell below the attributed "break-even" criteria was 67,000. Subsequently, a CPUC workshop developed additional criteria, as follows:

---

[37] While this could result in a situation where the national uniform maximum rate would be not be in effect in some areas or even some states, it also would give the states the flexibility they require to respond particularized local needs.

1. The Public Pay Phone is not part of a contract which provides monetary benefit to the Station Agency; AND
2. There is NO OTHER Public Phone located at the same address; AND
3. The Public Pay Phone is NOT a coinless pay phone; AND
4. The Station Agent on whose property the Public Pay Phone is located agrees to receiving NO compensation from the calls generated over that pay phone; AND
5. The general public should have unrestricted access to the Public Pay Phone. "Unrestricted Access" means that the pay phone should be physically and geographically accessible to the general public during the operating hours of the facility. Thus, if the pay phone is located inside a building, for example, the general public should be able to enter the building from the street to use the pay phone; AND
6. If the Public Pay Phone is located indoors, the Station Agent on whose property the pay phone is located agrees to the placement of a prominent sign (outside and inside the facility) which directs the general public to the pay phone location; AND
7. The Public Pay Phone meets ONE of the following conditions:
   a. The Public Pay Phone is located in a site designated by a public agency as a gathering place where emergency aid is dispensed to the general public in the event of a natural disaster. OR

b. The Public Pay Phone is located in a location where those residing in that location cannot individually subscribe to basic telephone service because of the unavailability of facilities necessary for access to the network. OR

c. The Public Pay Phone is located in an area where no other pay phone is readily or effectively accessible to the general public. "Readily and effectively" accessible refers to the presence of at least one other pay phone available to the general public within 50 yards walking distance from the Public Pay Phone in question, assuming ideal conditions. There will be circumstances, however, when an alternate pay phone is within 50 yards walking distance from the Public Pay Phone in question WHERE it may still be deemed as not "readily or effectively" accessible. Therefore, it is necessary to temper the application of this "50-yard" rule by considering all of the factors below in determining more accurately the extent to which the nearest alternative pay phone is available to the general public:

1. Topography;

2. Geography;

3. Demographic characteristics of users (e.g., elderly, handicapped, low income--where residence telephone subscription is low);

4. Economic development of the area;

5. Safety of the area;

6. Weather conditions

See California Public Utilities Commission, Workshop Report on Customer Owned Pay Telephone Service in Response to Commission Decision 90-06-018 at 29-32 and Appx. D (December 21, 1993) (Workshop Report). Initial application of the criteria reduced the number of "public interest payphones to 22,000. This number further decreased as the application of the guidelines were further refined,[38] and as IPP providers continued to place payphones in unserved areas, so that as of January 1993 the total number of identified "public interest" payphones was 1,975. Id. at 29-32.

The lesson of California's experience is that the criteria for public interest payphones should not be unduly broad. In keeping with the Commission's overall policies regarding universal service, subsidies should be narrowly targeted so as not to unnecessarily interfere with the efficient operation of market forces.

The House Committee Report on the Act states Congressional intent that the term "public interest payphones, should not include "a payphone located near other payphones, [or] a payphone that, even though unprofitable by itself, is provided for a location provider with whom the payphone provider has a contract." House Report at 89. See also Conference Report at 158.

The quoted California criteria provide a starting point, but should be refined as follows. As stated in the House Report, PIPs should not include any payphones that are "provided for a location provider with whom the payphone provider has a contract" or to whom the payphone

[38] The report identifies the guidelines that were initially proposed in 1988, but does not identify the more refined guidelines ultimately in place in 1993 or thereafter.

provider is paying a commission for traffic generated from any payphone, no matter where located -- whether or not the payphone itself is covered by commission payments under a contract. In other words, apart from the specific scope of contracts, a location provider may be able to obtain installation of additional payphones from the payphone provider as an amenity in return for selecting that payphone provider for the contract payphones. For example, if a county government has a commission contract with a payphone provider for payphones at the courthouse, fairgrounds, jail, etc., but the contract does not provide for placing a payphone at a playground or a remote crossroads, the county has the ability, if it believes there should be payphones at those locations, to request their placement, even without commission payments, as an express or implied condition for renewing the contract, or as an amenity.

Further, PIPs should not include any payphone that is not accessible to the public, or that is located within 200 yards of another payphone that is easily accessible from the public way.

Beyond this, the Commission should use procedures and criteria similar to California's for identifying whether and to what extent there is a need to support PIPs.

If there is a need to support PIPs, the supporting mechanism should be paid for by all payphone providers,[39] and both IPP providers and LEC payphone providers should be eligible to participate in providing PIPs. The Commission could require competitive bidding for the right to provide the service.

A variety of options are available to fund "public service" payphones. For example, the Commission could require imposition of a special rate element surcharge on all payphone lines and use funding from the surcharge to provide the subsidies required by payphone operators to

[39] Alternatively, a state may elect to have public interest payphones be paid for by a "universal service" mechanism funded by the general body of ratepayers.

offer service at unprofitable public service locations. Another option would involve the allocation of public service payphones among all payphone providers based upon a defined formula such as the total number of non-public service payphones which each company provides in the given service area.

VII. ENFORCEMENT OF PAYPHONE REGULATIONS

The Commission has adopted extensive regulations to govern public payphones. [Cites.] In general, compliance with these regulations has been widespread, to the best of APCC's knowledge. There has not been a serious compliance problem in most areas.

Nonetheless, the Commission is required to ensure that LEC payphones are removed from regulated accounts. In the future, the problem of ensuring full compliance with consumer protection regulations could be substantial. There are already over 300,000 IPPs in service, and at least 5 times that number of LEC public payphones in service. In many cases, these public payphones serve vital emergency and lifeline functions. The Commission should adopt a special enforcement program for payphone regulations that enlists the industry in the effort to ensure maximum compliance.

APCC believes a self–enforcement regime should be established in which every payphone provider would be required to contribute to a self-enforcement fund. The contributions could be a specific percentage of each payphone service provider's dial-around revenues. A self–enforcement program, consisting of inspections of public payphones on a random basis, as well as operation of a complaint center to receive complaints regarding rule violations (and perhaps perform other support functions, such as take refund requests, etc.) would be set up and administered by

an entity chosen by the Commission. Legal issues regarding such a self–enforcement fund will be addressed in APCC's reply comments.

July 1, 1996

Respectfully submitted,

Albert H. Kramer
Robert F. Aldrich
DICKSTEIN, SHAPIRO, MORIN &
OSHINSKY, L.L.P.
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202) 828-2226

Attorneys for American Public
Communications Council

ATTACHMENT 1

APCC SMDR PROJECT

ATTACHMENT 1

APCC SMDR PROJECT

In order to demonstrate call traffic patterns in the independent public payphone market, the American Public Communications Council, Inc. ("APCC") asked members to help APCC collect statistics on call counts and duration (call data) using the station message detail reporting ("SMDR") capabilities of their payphones.

Currently, 21 companies operating more than 100,000 payphones are submitting monthly call data for the SMDR Project. The samples used total more than 4000 payphones in 32 states and in 73 different area codes across the United States. The payphones are at a wide variety of locations such as hotels, motels, convenience stores, restaurants, business districts, shopping malls, gas stations, apartment buildings, truck stops and casinos. More than 10 companies provided APCC with call data for each month from March 1996 through May 1996.

Project participants polled their payphones from their computers in order to download the call data into payphone management software. The members exported the call data to monthly files and sent the files to APCC's administrative office for further processing.

As part of this project, APCC compiled a list of "800" numbers that appeared with some frequency on payphones SMDR records. The organization subscribing to each collected number was identified by calling each number. Each number was then placed into one of three categories: (1) carrier access codes; (2) prepaid cards; or (3) subscriber 800 numbers. Lists of identified carrier access code numbers and prepaid card numbers, as of May 9, 1996, were provided by APCC to Stefek Enterprises in Killeen, TX. Stefek inserted these lists into a database within its call data analyzer software, Payphone Data Reconfiguration System ("PDRS"). These lists were used to determine the frequency of access code and prepaid card calls directed to various carriers from the sample payphones. The lists are appended as Exhibit A.

APCC used a modified version of PDRS to produce summaries of each company's monthly call data, showing call counts and summary detail for various categories of coin calls and non-coin calls. The detail includes call counts for carrier access codes and prepaid card numbers identified with different carriers. These reports were exported from PDRS and imported into Excel spreadsheets.

Within Excel, statistics were developed for each company showing month-by-month average call counts per payphone, call percentages and carrier percentages for various categories of calls. Average statistics for all the companies for each month from March 1996 through May 1996 were developed by aggregating call data from every company submitting call data for each specific month, and averaging each month's total over the number of payphones reporting data for the month.

APCC is continuing the SMDR Project in order to compile a record of call traffic patterns that is as comprehensive as practicable during this critical period in the development of payphone competition.

Industry Statistics												
Average per ANI												
Year/Month	***9601***	***9602***	***9603***	***9604***	***9605***	***9606***	***9607***	***9608***	***9609***	***9610***	***9611***	***9612***
No. of ANIs			*2,347*	*3,367*	*4,000*							
Call Counts												
Coin & Noncoin Total			701	647	738							
Coin calls subtotal			505	459	535							
Noncoin calls subtotal			196	188	203							
Matched Access			40	38	44							
Matched PrePaid			3	3	3							
Nonmatched Calls			98	96	102							
411			11	11	13							
555			2	2	2							
0-			10	10	11							
00-			1	1	1							
0+			31	26	27							
Call Percentages												
Coin calls subtotal			72	71	73							
Noncoin calls subtotal			28	29	27							
Matched Access			*20*	*20*	*21*							
Matched PrePaid			*2*	*2*	*2*							
Nonmatched Calls			*50*	*51*	*50*							
411			*6*	*6*	*6*							
555			*1*	*1*	*1*							
0-			*5*	*6*	*6*							
00-			*0*	*1*	*1*							
0+			*16*	*14*	*13*							
Carrier Percentages												
Matched Access												
AT&T			51	51	49							
MCI			32	33	34							
Sprint			9	8	8							
LDDS Worldcom			2	1	2							
Frontier/Allnet			1	0	0							
Total Matched %			*94*	*93*	*93*							

Carrier Access Codes -- detail

Exhibit A

AT&T
10288
10732
800-225-5288 (CALLATT)
800-673-7286 (OPERATOR)
800-321-0288

Other AT&T Codes
to be totaled into a single line
800-222-5528
800-233-8923 (Asian language)
800-233-9008 (Spanish)
800-269-8400
800-433-3273
800-452-5252
800-552-6228 (Spanish)
800-957-9000

AT&T Totals:

MCI
10222
950-1022
800-888-8000
800-205-5328 (800 COLLECT)
800-265-5328 (800 COLLECT)
800-225-5265 (800 COLLECT)
800-226-2727 (800 COLLECT Spanish)
800-674-7000
800-674-7010 (SW Operator Services)
800-950-1022
800-950-1111
800-674-2105 (Working Assets)
800-674-0881 (Spanish)
800-674-0888 (Asian language)

Other MCI Codes
to be totaled into a single line
800-444-9595
800-484-1042
800-484-1746
800-484-2762
800-484-6964
800-484-7240
800-484-7417
800-484-8749
800-484-8828
800-484-9589
800-484-9596
800-484-9661
800-484-9665
800-484-9676
800-484-9692

800-484-9707
800-484-9734
800-484-9765
800-674-0012
800-674-0016
800-674-0136
800-674-0220
800-674-0245
800-674-0259
800-674-0545
800-674-0696
800-674-0700
800-674-1003
800-674-1057
800-674-1331
800-674-1397
800-674-1403
800-674-2667
800-674-3381
800-674-5907
800-674-7030
800-674-7081
800-674-7100
800-674-7174
800-674-7184
800-674-7268
800-674-7300
800-674-7423
800-674-7445
800-674-9584
800-950-3293

MCI Totals:

SPRINT
10252
10333
10872
950-1033
800-877-8000

Other Sprint Codes
to be totaled into a single line
800-277-7468
800-638-2394

Sprint Totals:

LDDS WORLDCOM
800-275-1234
800-741-9000 (Online Operator Services)

Other LDDS Codes
to be totaled into a single line
800-365-8309
800-809-1212 (Online Operator Services)
800-864-4080

LDDS Totals:

FRONTIER/ALLNET
800-783-1444

Other Frontier Codes
to be totaled into a single line
800-236-5255 (Schneider Communications)
800-556-6703 (Schneider Communications)
800-724-1003
800-724-5536
800-787-2502
800-836-7353

Frontier Totals:

(Access Code Detail Continued)

CABLE & WIRELESS
800-899-0029

EXCEL--TX
800-783-9235

FTS 2000
800-366-4000

LCI INTERNATIONAL
800-860-6000
800-860-8600

LONG DISTANCE
800-776-0606 (Operator Service)

MFS INTELLINET
800-326-5000

ONCOR
800-424-0036 (Calling Card Service)
800-864-3334

TELECOM USA
800-674-1328
800-674-7600
800-674-7900

TELTRUST
800-324-2080

TOUCH ONE LD--AL
800-486-8241

US LONG DISTANCE
800-460-7000

(End of Carrier Access Code Detail)

Other Carrier Access Codes

to be totaled into a single line

ACCESS ONE
800-500-3110

AMERICAN TELCO--Houston, TX
800-856-5656

ATX TELECOMMUNICATIONS
800-220-9000
800-355-9000

CABLE & WIRELESS
800-899-1129
800-899-3900
800-899-7020
800-899-7212
800-899-8516
800-899-9393
800-899-9494
800-899-9111
800-899-9888
800-899-9900
800-899-9922
800-899-9944

CAROLINA TELEPHONE LONG DISTANCE
800-669-5000

CENTURY TELEPHONE LONG DISTANCE
800-674-7310

CORPORATE TELE MANAGEMENT
800-783-3200

CTI
950-0221

DELTACOM
800-239-1233

DIAL LONG DISTANCE
800-733-2848

EASTERN TELECOM
800-275-4382

EXCEL--TX
800-400-6531

FRENCH TELECOM
800-537-2623

FULL SERVICE NETWORK
800-220-9001

GE DIALCOM
800-347-7843

GLOBAL KEY
800-257-0444
800-364-2906

HEB CALLING CARD SYSTEM
800-430-5090

ISLANDS DIRECT
800-562-6262

LCI INTERNATIONAL
800-200-0000
800-860-1000

LOCKHEED MARTIN AND MARCALL
800-359-5858

LONG DISTANCE SAVERS
800-256-3899

MATRIX TELECOM
800-325-4896

MFS INTELLINET
800-200-1637

NATIONAL TELESERVICE NETWORK
800-584-6666

NETWORK CENTER LONG DISTANCE
800-734-4679

NETWORK LONG DISTANCE--TX
800-675-9888

ONE CALL LONG DISTANCE
800-876-7688

PETRO CALLING CARD
800-305-6771

PILGRIM TELEPHONE
800-243-9829
800-265-5327
800-365-5328

POPP TELCOM--MN
800-848-4870
800-934-7632
800-944-0684

QCI CALL POWER (PROCOM)
800-460-6691

SHATOKWA & ERIE LONG DISTANCE
800-724-1515

TARGET COMMUNICATION NETWORK
800-625-3044

TELECOM AUSTRALIA
800-682-2878

TELENATIONAL LONG DISTANCE
800-743-7443

TELTRUST
800-530-3252

TRANSNATIONAL
800-800-9400

TTI
800-215-9910
800-480-5588

US WATTS
800-654-3211

VALUECOM LONG DISTANCE
800-308-6050

VISTA INTERNATIONAL
800-968-4782

VMX SYSTEM
800-624-5186

(End of Access Code List)

Prepaid Cards -- detail

AT&T Prepaid Cards
800-357-7243

Other AT&T Prepaid Cards
to be totaled into a single line
800-363-2547 (True Ties)
800-405-0872 (True Ties)
800-423-1231 (True Ties)
800-442-2373 (True Ties)
800-767-5582 (True Ties)
800-682-0882 (True Ties)
800-850-8437
800-862-2768 (True Ties)
800-899-5682 (True Ties)
800-908-9223 (True Ties)

AT&T Totals:

MCI Prepaid Cards
800-325-0460
800-325-0693
800-443-7911 (Pocket Payphone)

MCI Totals:

SPRINT Prepaid Cards
800-741-9920 (Sprint Spree Card Network)
800-743-6661 (Sprint Spree Card Network)
800-678-7144 (Sprint Spree Card Network)
800-672-1212 (Sprint Spree Card Network)

Other Sprint Prepaid Cards
to be totaled into a single line
800-238-5355 (Sprint Spree Card Network)
800-318-4550 (Instant Card Calling)
800-497-2020 (Instant Card Calling)
800-541-9980 (Sprint Spree Card Network--Spanish)
800-586-0505 (Instant Phone Card)
800-659-1010 (Instant Phone Card)
800-735-8348 (Sprint Spree Prepaid Card)
800-735-8349 (Sprint Spree Prepaid Card)
800-735-8358 (Sprint Spree Prepaid Card)
800-800-1717 (Pre-Paid Calling Card)
800-941-9817 (Payphone Services Prepaid Calling Card)

Sprint Totals:

(Prepaid Cards Detail Continued)

CALL SAVER
800-569-1900

COMDATA NETWORK
800-447-5693
800-741-6060

DISCOVER CONGO PHONE PASS LINE
800-929-2652

DRIVELINE
800-808-0805

FLEET CALLING CARD PROGRAM
800-877-5553

GTI TELECARD SERVICE
800-469-8598
800-569-4545

INDEPENDENCE CARD
800-997-2222

NORTH ATLANTIC INTELLICOM
800-510-0064
800-816-6345

NTC TRAVEL CARD
800-569-1014

RITE AID LIBERTY CARD
800-745-3600

ROADLINK
800-359-9455

711 PHONE CARD
800-551-0711
800-828-9711
800-325-0277

SURESAVER
800-591-1313

TALK AND TOSS
800-977-2777
800-955-2439
800-999-0701

TLC PHONE CARD
800-304-2608
800-626-3998
800-335-7476
800-451-7846
800-318-4219
800-295-4593
800-451-7912
800-896-5986

800-852-2189
800-556-0049

TRANSCARD
800-326-3888 (English and Spanish)

US TELECARD
800-489-4878

WESTERN UNION
800-374-8686 (Phone Card)

(End of Prepaid Cards Detail)

Other Prepaid Cards

to be totaled into a single line

ACCESSWORLD
800-762-1006

ACME PHONE CARD
800-565-4471

ACMI
800-991-0007

ADVANTAGE PHONE CENTER
800-422-8511

CALL EXCHANGE
800-257-2212 (Spanish)

CALLING PREPAID SERVICE
800-225-5946

CBG CALLING CARD
800-364-7444

CALL TIME
800-385-0032

CONNECT TELECOM
800-540-0544

CONQUEST
800-320-7777

DEBIT CALL
800-286-8093

DEBIT CARD SERVICE
800-390-9555

DOLLAR RENT-A-CAR TELECARD
800-364-8877

DRUG FREE ALLSTARS
800-379-6281

ECKARD
800-607-0045

FREE PLUS CALLING
800-555-0404

GLOBAL LINK
800-864-3322